IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.	:	10/823,829	Confirmation No. 5642
Applicant	:	Evans et al.	
Filed	:	April 14, 2004	
Art Unit	:	3714	
Examiner	:	Aileen Chyn	
Docket No.	:	CHORUS-P007-01	
Customer No.	:	27268	

DECLARATION OF ALAN L. COLQUITT

I, Alan L. Colquitt, Ph.D. of 7805 Timber Run Lane, Indianapolis, IN 46256 declare as follows:

1. I have over 20 years of experience implementing testing programs as an internal consultant in The Procter & Gamble Company (1985-1990) and Eli Lilly and Company (1990-present). I have a Ph.D. in Industrial and Organizational Psychology from Wayne State University in Detroit, MI. I have specialized training in the areas of test development, test validation, and psychometrics. I have considerable experience developing tests and testing programs for a variety of purposes including: Pre-employment screening; employee and leadership development; identification, selection and development of leaders and high potential employees; promotion; and reallocation. See attached resume for additional background (Exhibit A).

2. I have studied the disclosure of the above-identified patent application ("Evans") and the disclosures of U.S. Patent Publication No. 2002/0045154Q1 to Wood (The "Wood" application) and U.S. Patent Nos 7,148,969 and 6,341,267 to Bonstetter and Taub (the "Bonstetter Patent" and "Taub Patent" respectively).

3. I have studied the Office Action issued by the patent examiner on October 3, 2007 in application serial number 10/823,829; and have the following comments on the assertions in the Office Action organized by paragraph number from the Office Action:

4. Section 14. With reference to Figure 5 (elements 1330-1333) and page 4, section [0076], when Wood describes "personality tests", he includes what one of ordinary skill in the art would not refer to as personality tests. Personality tests are not the same as ability tests, interest inventories, and other tests (see Guion, 1998, pp. 485-486, pp.591-592 for an overview

of types of tests and inventories and their differences, Exhibit B). Under Wood, the choice of tests and the number of tests is dependent on the goals of the user. A plurality of tests is not used if the user selects a service requiring no tests or one test. A plurality of tests CAN be used but it is not required. Moreover, in Wood, tests are not used to measure competencies, nor are they linked to competencies or used as evidence about the relative presence or absence of a competency. Under Wood, tests and test results stand by themselves. Users are "classified" (this means "scored" to those of ordinary skill in the art) based on the tests and other tools and then are linked directly to services or products. Evans requires multiple tests. To reliably and validly measure attributes and to link attributes to competencies, one of ordinary skill in the art would require a plurality of tests. Wood does not require a plurality of tests.

5. Section 15. With reference to Figure 3 and page 5, section [0143], Wood asks questions of the user that are not part of tests. Tests are typically comprised of many questions or items. However, one of ordinary skill in the art would not refer to questions as tests. The fact that a user is asked questions about finance, does not mean he/she is taking a finance test. Developing a test requires a systematic process of defining a construct, developing and testing stimulus material to measure the construct, evaluating the stimulus material for its ability to measure the construct, and establishing the reliability and validity of the test as a measure of this construct. For more information on this process, see "principles of test development" in Guion, 1998, pp. 490-497. Woods process does not require "tests" in the way one of ordinary skill in the art would describe them. Tests may not be used at all under Wood, as would be the case when the user is simply asked questions about Finance. Wood also includes tests and tools that are not professionally developed and validated. Finally, Wood allows users to change the way the tests are scored and weighted (see [0194], [0195], [0196]). Under Evans, the scoring of tests is standardized based on the expert judgment and research of the test publishers. One of ordinary skill in the art would not allow changes to the scoring (or "classification" as used by Wood) methodology. This invalidates the tests.

6. Section 16. With respect to page 6, section [0165], USED IN CONJUNCTION is not the same as CROSS REFERENCED. Under Wood, "USED IN CONJUNCTION" means multiple tests are used "together" or "cumulatively" to classify someone. Under Evans, "CROSS REFERENCED" means that the multiple tests are used to score attributes, and the scored attributes are used as input in the scoring of a competency. Thus with Evans, each test provides one or more scored attributes, and the attributes associated with particular competencies are cross-referenced to provide an evaluation of the competency. With Evans, multiple competencies are evaluated based on the cross-referenced attributes. Wood cannot "CROSS

REFERENCE" since it doesn't use attributes or competencies (see Item 4 above). With respect to page 6, section [0168], under Wood, more testing CAN be required, but it is not mandated. How much testing is conducted is dependent upon the service or product or the wishes of the user (See Item 4). Under Evans, the Hallmarks process mandates a plurality of tests. This is not required under Wood. Again, one or ordinary skill in the art would require a plurality of tests to adequately measure the competencies outlined in Evans. While Wood allows for multiple media or ways to measure things (e.g. a simulation or a test) (page 6, paragraph [0167]) and while these may be used "in conjunction", they are not "cross referenced" since the test results stand by themselves and are not linked to attributes or competencies as they are in Evans.

7. Section 17. The examiner is correct in stating that Wood does not disclose the specific tests. Wood cannot do so without reference to a particular user's request, goals, product or service. Moreover, as discussed in Items 4 and 6 above, Wood does not use attributes or competencies in his system. Test results are not used as evidence about the relative presence or absence of attributes and competencies. Test results stand by themselves.

8. Section 18. With respect to Bonstetter, the examiner equates behavioral interview questions or items in a job analysis questionnaire with tests. One of ordinary skill in the art would draw a substantial distinction between the purpose of the system and tools described in Bonstetter and those described in Evans. Bonstetter is measuring or profiling JOBS. The questionnaire he describes and uses is a job analysis questionnaire. Evans is measuring PEOPLE and uses psychometric tests. See Guion, 1998 pp. 57-59 (Exhibit B) and Wikipedia (Exhibit C) for an overview of job analysis . Moreover, one of ordinary skill in the art would <u>not</u> equate written behavioral interview questions described in Bonstetter to test items, nor would one of ordinary skill use an interview or a job analysis questionnaire as a test (see Guion 1998, Chapter 11, pp. 485-540 and Chapter 13 pp.606-624 for the distinction between "assessment by tests" and "assessment by interviews"). Bonnstetter uses questions to measure jobs, in an attempt to understand the extent to which competencies are essential to a job. Evans uses tests to provide evidence about the relative strength or weakness of attributes and competencies in people. Under Evans, test questions are linked to test scales for scoring. Test scales or dimensions are then linked to attributes, which are in turn linked to competencies. Questions discussed in Bonstetter are linked directly to competencies. However, one of ordinary skill in the art would see that what Bonnstetter and Evans do accomplishes completely different purposes. Competency ratings under Bonstetter indicate whether or not a competency is essential to a job or position. These ratings are averaged across a number of persons asked the same questions or who complete the same job analysis questionnaire. Under Evans, competency ratings indicate

the relative strength or weakness of the person and are averages of attribute scores, which are in turn defined by test results.

9. Section 19. Examiner says it would have been obvious to one of ordinary skill to have applied the plural tests for plural leadership competencies of Bonstetter to the employment competency testing system of Wood. One of ordinary skill in the art would not see this as obvious. This has been partially addressed in Item 8 above. Bonstetter does not use tests, and uses competencies in a fundamentally different way than Evans. Moreover, the examiners comments presume that Wood has a "competency testing system". In my opinion, one of ordinary skill would not refer to Wood's system as a "competency testing system". It is a job analysis system. In section [0153], Wood describes gathering data from users on what their job related interests are. The examples listed in Wood are "interest questions". One of ordinary skill in the art would not refer to "interest questions" or interest areas as "competencies". Competencies are "a combination of motives, traits, self-concepts, attitudes or values, content knowledge or cognitive behavior skills...that can be reliably measured or counted that can be shown to differentiate superior from average performers" (Spencer, McClelland, & Spencer, 1994, as reported in Ash et al, 2000, p. 706 (Exhibit D). The emphasis is on "combination" (competency is not a unitary concept) and "performance" (competencies are grounded in Performance). Tests or interest questions in this case are used a "signs" or "signals" of future performance or "competence". They are predictors that someone will be able to perform in the future. This is a key distinction to those of ordinary skill in the art. This distinction is described in Wernimont and Campbell (1968), p.197-203 (Exhibit E). Moreover, the fact that someone is interested in "working with others" is not the same as being skilled or competent in the area of "teamwork" or "interpersonal skills". One of ordinary skill in this art would consider this distinction to be an important one. Moreover, while Wood uses tests, his system does not measure competencies, nor does he link tests and test results to anything like attributes or competencies. The examiner is correct in stating that Wood allows for multiple tests. However, this is at the discretion of the user and, as indicated in Item 6 above, Wood does not mandate the use of multiple tests or a suggestion of how to use multiple tests. The examiner is also correct in saying that Wood system can be used for corporate development in paragraph [0313]. However, Wood does not use attributes and competencies, nor does Wood mandate or suggest a plurality of questions and tests and cross referencing. One of ordinary skill in this art would not consider Wood's system to contain these elements. The examiner presumes that Wood and Bonnstetter are "solving the same basic problem" in Wood (paragraphs [0347] to [0350]) and Bonnstetter. This would be inconsistent with the way one of ordinary skill would interpret and use these

systems. Bonnstetter is assessing a job, Wood is assessing a person. Bonnstetter's system would initially be used to establish which competencies are important for a job. This information would then form the basis for building several different systems and processes (for hiring, evaluating performance, promotion, compensation, etc.), one of which could be a system and process for assessing people for the specified job.

10. Section 20. The Evans analysis involves algorithms to translate test items and test dimensions into attribute scores, and additional algorithms to translate attribute scores into competency scores. The examiner equates these algorithms with the weighting described in Wood. This conclusion is inconsistent with how one of ordinary skill in the art would interpret these terms. Wood combines personality dimensions together into a "node" (page 8, paragraph [0188]). A "node" is not an attribute or a competency. A node is an element of the personality test; it is the essential output of the personality test. Wood in no way links these nodes to attributes or competencies. Once a user has been "classified" (based on his nodes), content is presented to the user (see page 11, paragraph [0285]). Wood's nodes are also flexible; they may include a few or many traits. One of ordinary skill in the art would not consider as "matching" what is described in Woods (page 8, paragraph [0192]). One of ordinary skill in the art would refer to this as "scoring"...scoring the personality test or determining the profile. This "matching" and "weighting" referred to in Wood relates to how the test is scored (e.g. ENTJ on the MBTI), not how a test relates to an attribute or a competency.

11. Section 21. One of ordinary skill in the art would not refer to the items listed by the examiner from Wood ("Emotional Intelligence" and "questions about finance") as competencies. Please see Item 9 above for a discussion of what competencies are and how they differ from tests. "Emotional Intelligence" is defined as "the ability to monitor one's own and others feelings and emotions, to discriminate among them, and to use this information to guide one's thinking and action" (Mayer and Salovey, 1997, p. 443, Exhibit F). They are defined as "abilities" and are measured by an ability test. Again, referring to the discussion in Item 9 above, tests are "signs", something predictive of performance or competence (Wernimont & Campbell's typology). They are not the same thing as a competency. In fact, one of the tests used in the Evans process is an Emotional Intelligence test. Results are used to provide evidence about several of the competencies in the Evans process. For similar reasons, one of ordinary skill in the art would not consider "questions about finance" to be competencies (see Items 5 and 8 above for differences between questions and competencies). Asking questions about financial matters may provide evidence relating to the relative presence or absence of certain competencies, however, one of ordinary skill in the art would not refer to these questions as

"competencies". Wood's system does not use competencies. His system uses tests results by themselves. While Wood indicates his system can be used to find people with competencies and he says that competency models CAN be used (page 14, paragraph [0337]), the Wood system as described does not use them, nor is Wood specific about how they would be used.

12. Section 22. See above discussion related to claims 1-3 (Items 4-11)

13. Section 23. See above discussion related to claims 1-3 (Items 4-11)

14. Section 24. The examiner references page 4, paragraph [0067] from Wood. This shows Wood's computer network for taking tests. One of ordinary skill in the art would see Wood's network and Evans' network as similar.

15. Section 25. As reviewed in Item 8 above, the Bonnstetter system focuses on the job, not the person. One or ordinary skill in the art would not associate an "action plan" which focuses on the development of the individual as being a part of a system described in Bonstetter. Bonnstetter uses tools that could be used to create an individual action plan, but there is no rationale given in Bonnsteller to use them that way. Further, the advice discussed in Wood, that can represent the output of Wood's assessment (see page 6, paragraph [0153]), is career advice. By this Wood means advice related to what jobs might be appropriate. One of ordinary skill in the art would not consider this to be development advice or actions one might engage in to improve in a competency area

16. Section 26. As discussed above with respect to Item 15 above (page 6, paragraph [0153]), the advice discussed in Wood that can come from this assessment is career advice related to what jobs might be appropriate. This is not the same as or equivalent to development advice and actions one might engage in to improve in a competency area. Moreover, advice on how to "get along with co-workers" is not the same as an action plan. An action plan may include activities to improve a person's ability to work as a team member, but this activity is not in and of itself an action plan. An action plan has several activities, a sequence, a schedule, and a list of others to involve. Finally, under Wood, the advice itself is triggered by a direct request from a user, not by the results from a comprehensive assessment. Choosing an area in which to purchase advice is not the same as having an action plan. Moreover, having a system that has, as one option, to provide advice is not the same as having a system that does an assessment that provides action plans based on test results. In Bonnstetter, having a "behavioral blueprint" (Fig. 9D) refers to the job, not to the person. The focus of this blueprint is on what behaviors are required for success in this job. One of ordinary skill in the art would not equate this with an action plan. An action plan is focused on activities an individual would engage in to strengthen a competency. Bonnstetter's blueprint shows what competencies are important to a job. Knowing

what behaviors are required implies nothing about the strengths or weaknesses of the incumbents who may perform those jobs or the actions that may be undertaken to improve in these areas.

17. Section 27. I agree with the examiner that Wood and Bonstetter are not focused on the same things as the Evans system.

18. Section 28. With respect to Taub, col. 21, lines 25-36, I agree with the examiner's position that Taub discloses the basic elements of an action plan as described in the Evans application. However, Taub is focused on improving broad behavioral capabilities relevant to all aspects of life. These "behavioral capabilities" are much broader than competencies, focused on all aspects and domains of a person's life. Competencies are focused on areas relevant to work and a specific job or position. Further, a list of interventions is not an action plan. An action plan has a schedule associated with the interventions with specific dates. In Taub, intervention planning is optional. It is not part of the integrated system like in Evans. One of ordinary skill in the art would see the action planning step as a required step. Unless specific actions are identified, improvement is not likely to happen.

19. Section 29. The examiner alleges that it would have been obvious to one of ordinary skill in the art to incorporate action planning into Wood or Bonstetter on the basis of Taub. One of ordinary skill in the art would see action planning as inconsistent with Bonstetter (see Item 15 above). Bonstetter's system is not focused on the person—it is focused on the job. Jobs do not have action plans, people have action plans. One of ordinary skill in the art would not see action planning under Wood as obvious because Wood is not focused on gaps or deficiencies in attributes or competencies. Wood classifies people and then gives them products and services that pertain to their "type". The Wood system does not need gaps or deficiencies to recommend products and services. One of ordinary skill in the art associates action plans with gaps or deficiencies.

20. Section 30. See above discussion related to claims 4 (Item 16).

21. Section 31. See above discussion related to claims 1and 4 (Item 4-9 and Item 16).

22. Section 32. See above discussion related to claims 2 and 3 (Item 10 and 11).

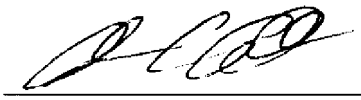
23. Section 33. Wood talks about personality characteristics, and Wood does not talk about competencies. One of ordinary skill in the art would not consider these to be the same thing or equivalents. Personality is a "dynamic organisation, inside the person, of psychophysical systems that create a person's characteristic patterns of behaviour, thoughts, and feelings." (Carver & Scheier, 2000, p.5, Exhibit G). A person's personality DRIVES patterns of behavior. Personality characteristics are NOT the behaviors themselves. Competencies (defined in Item 9 above) are not the same as personality characteristics. Again referring to the

Wernimont & Campbell (1968) typology, personality characteristics would be considered "signs"; competencies would be considered "criteria" (performance measures expressed in behavioral terms). Further, one of ordinary skill in the art would not equate attributes (under Evans) with "personality types (under Wood). Personality characteristics under Wood are measured with the Keirsey Temperament sorter or MBTI, and their specific scores or patterns of scores on the characteristics cause the user to be labeled with a certain type (e.g. ESTJ on the MBTI). Personal characteristics and personality types are all part of the personality testing system. Attributes (under Evans) describe the separate elements of a competency, broken down into more detail. Under Evans, personality test results provide evidence regarding the relative presence or absence of attributes. These attributes are independent of the testing system and are a part of the competency definition system. With the Keirsey Temperament Sorter, instead of using letter codes as labels, they use descriptive word labels. These labels are again part of the personality testing system. Moreover, they don't correspond to actual actions. They are linked to actions in the theoretical sense, that people with a given Keirsey profile WOULD be expected to do these things. These are definitional, not based on any observed evidence. While the Keirsey Temperament Sorter roles could be linked to competencies, this is not a part of the system under Wood.

24. Section 34. One of ordinary skill in the art would not call what Wood refers to in paragraph [0153] as multiple competencies. "Working outside", "attention to detail", etc. would not be considered competencies by one of ordinary skill in the art. In this circumstance, one of ordinary skill in the art would refer to these as "interests" (see Item 9). Again, in the Wernimont and Campbell (1968) typology, these questions would be considered signs; competencies would be considered criteria. I agree with the examiner that Woods implies using multiple tests in paragraphs [0108] and [0125]. However, many of the specific things Woods discusses on pages 4 and 5 would not be considered "tests" by one of ordinary skill in the art (e.g. family history, religious beliefs) (see Item 4 above). One of ordinary skill in the art would not equate personality temperament variants ([0032] of Wood) with attributes (under Evans) (see Item 23 above). In addition, one of ordinary skill in the art would not call a temperament a competency (see Item 22 above). Moreover, the fact that MBTI has bipolar scales does not mean it measures 2 attributes. It simply means the developers of the MBTI chose to define what their personality characteristics mean by using different definitions at different ends of the scale, vs. simply defining the characteristics and then allowing someone to be high or low on it. Finally, the fact that there are 4 dimensions to the MBTI does not mean there are 4 competencies, per the discussion in Item 22 above.

25. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under §1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

And further, I sayeth not.



Date: 3-3-08

Alan L. Colquitt

References

Exhibit A--Resume of Alan L. Colquitt

Exhibit B--
Guion, Robert M. (1998). *Assessment, measurement, and Prediction for Personnel Decisions.* Lawrence Erlbaum Associates, New Jersey. pp. 57-59; 485-540; 591-592; 604-624.

Exhibit C--
Wikipedia (2008) http://en.wikipedia.org/wiki/Industrial_and_organizational_psychology

Exhibit D--
Spencer L.M., McClelland D.C., Spencer S. (1994). *Competency assessment methods: History and state of the art.* Reported in Ash RA, Battista M, Carr L, Eyed LD, Hesketh B, Kehoe J, Pearlman K, Prien ER (2000). The practice of competency modeling. *Personnel Psychology*, 53, pp. 703-740.

Exhibit E--
Wernimont P.F. & Campbell J.P. (1968). "Signs, Samples, and Criteria". In Dreher GF & Sackett PR (1983). *Perspectives on Employee Staffing and Selection.* Homewood, IL: Richard D. Irwin, Inc. pp. 197-203.

Exhibit F--
Mayer, J.D. & Salovey, P. (1993). The intelligence of emotional intelligence. *Intelligence*, 17, 433-443.

Exhibit G--
Carver, C. S., & Scheier, M. F. (2000). *Perspectives on personality* (4th ed.) As reported on web page: http://wilderdom.com/personality/L5-1WhatIsPersonality.html